

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:) P. & S. Docket No. D - 01-0011 RECEIVED
)
3-State Stockyards, Inc.)
and Robert J. Witt,)
)
Respondents) Decision Without Hearing by Reason of
) Consent

This proceeding was instituted under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 et seq.) (hereinafter referred to as the "Act") by a Complaint filed by the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, alleging that Respondent willfully violated the Act and regulations. This decision is entered pursuant to the consent decision provisions of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.138).

Respondents admit the jurisdictional allegations in paragraph I of the Complaint and specifically admit that the Secretary has jurisdiction in this matter, neither admit nor deny the remaining allegations, waive oral hearing and further procedure, and consent and agree, for the purpose of settling this proceeding and for such purpose only, to the entry of this decision.

Complainant agrees to the entry of this decision.

Findings of Fact

1. Respondent 3-State Stockyards, Inc. (hereinafter, "the corporate Respondent"), is a corporation whose business mailing address is East 5th Street, Falls City, Nebraska 68355.
2. The corporate Respondent was at all times material herein:
 - (a) A posted stockyard subject to the provisions of the Act;

- (b) Engaged in the business of a market agency, selling livestock on a commission basis; and
- (c) Registered with the Secretary of Agriculture as a market agency selling livestock on a commission basis.

3. At all times material herein, the corporate Respondent was owned by Robert J. Witt and his sons, Thomas Witt and Brian Witt, who each held one-third of the stock.

4. Respondent Robert J. Witt (hereinafter, "the individual Respondent"), is an individual whose business mailing address is Route 1, Box 187, Falls City, Nebraska 68355.

5. The individual Respondent, at all times material herein:

- (a) Was secretary and owner of one-third of the stock of the corporate Respondent;
- (b) Ran the day-to-day business operations of the corporate Respondent; and
- (c) Was responsible for the direction, management and control of the corporate Respondent and was the alter ego of the corporate Respondent.

Conclusions

As Respondents admit the jurisdictional facts and the parties agree to the entry of this decision, this decision will be entered.

Order

Respondent 3-State Stockyards, Inc., its officers, directors, agents, employees, successors and assigns, and Respondent Robert J. Witt, individually or through any corporate or other device, in connection with their operations subject to the Act, shall cease and desist from:

1. Failing to deposit in the corporate Respondent's "Custodial Account for Shippers' Proceeds" within the time prescribed by section 201.42 of the regulations (9 C.F.R. § 201.42) an amount equal to the proceeds receivable from the sale of consigned livestock;
2. Failing to maintain the corporate Respondent's "Custodial Account for Shippers' Proceeds" in conformity with the provisions of section 201.42 of the regulations (9 C.F.R. § 201.42); and
3. Using custodial funds for purposes of their own or for any purpose other than the remittance of net proceeds to the person or persons entitled thereto and the payment of lawful marketing charges;

The corporate Respondent shall keep and maintain accounts, records and memoranda which fully and correctly disclose all transactions conducted subject to the Packers and Stockyards Act, including, but not limited to, a check register or outstanding checklist for its general checking account and shall reconcile its general checking account and maintain reconciliation records for such account.

The corporate Respondent is suspended as a registrant under the Act, and the individual Respondent is prohibited from becoming a registrant under the Act, for 14 days starting April 8, 2002.

Pursuant to section 312(b) of the Act (7 U.S.C. § 213(b)), Respondents are assessed a civil penalty, jointly and severally, in the amount of Six Thousand Seven Hundred and Fifty Dollars (\$6,750.00).

The provisions of this order shall become effective on April 8, 2002.

Copies of this decision shall be served upon the parties.

3 State Stockyards
by Robert J. Witt
for 3-State Stockyards, Inc.

Robert J. Witt
Robert J. Witt
Respondents

Ernest H. Van Hooser
Ernest H. Van Hooser, Esq.
Attorney for Respondents

Andrew Y. Stanton
Andrew Y. Stanton
Attorney for Complainant

Issued this 4th day of
April, 2002

James W. Hunt
James W. Hunt
Chief Administrative Law Judge